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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,719	02/09/2004	Sunny Carmel	28022-95505	9557
23644	7590	03/31/2006	EXAMINER	
<b>BARNES &amp; THORNBURG, LLP</b> P.O. BOX 2786 CHICAGO, IL 60690-2786				MATHEW, FENN C
ART UNIT		PAPER NUMBER		
3764				

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/774,719	CARMEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Fenn C. Mathew	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2,3,5,6,11,14,15,17 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2,3,5,6,11,14,15,17 and 22-26 is/are rejected.
- 7) Claim(s) 11 and 14 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/17/2006 has been entered.

***Claim Objections***

2. Claims 11 and 14 are objected to because of the following informalities: The term 'the strip' lacks positive antecedent basis. The phrase should read –the channel-. Appropriate correction is required. In claim 14, the phrase 'the portion of the user's body' should read –a portion of the user's body-.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 3, 5, 6, 11, 14, 15, 17, and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rawlings (U.S. 2,035,010) in view of Van Ballegooie (U.S. 5,336,151) and Bosch (U.S. 4,441,707). Referring to claims 22, 24, and 25, Rawlings

teaches an elongated resistance element (5) stretchable along substantially its entire length (inherently since Rawlings states the member is elastic), at least one handle (8) secured to the elongated tube to enable the tube to be stretched by exerting a force on the handle (note figure 2), and an engaging member (1) having a first side and an opposite side, the engaging member having a width and a length between a first end and a second end with the length being greater than the width and with the engaging member being flexible along substantially its entire length, the engaging member including an adjustable portion whereby the first end and the second end are releasably fastened (col. 1, lines 25-33) permitting adjustable engagement, the opposite side including a channel (6) slidably engaging/coupling the elongated tube whereby the elongated tube is capable of sliding along the channel. Rawlings fails to specifically disclose the elastic member comprising a rubber tube. Van Ballegooie teaches in col. 5, lines 38-46, the desirability of utilizing elastic rubber tubes in an analogous resistance exercise citing the excellence of results. In view of the teachings of Van Ballegooie it would have been obvious to one of ordinary skill in the art at the time of invention to have the elastic member of Rawlings comprise rubber elastic tubing as taught by Van Ballegooie in order to enhance exercise. Rawlings also fails to teach the use of hook and loop fasteners as an adjustable portion. The use of hook and loop fasteners are notoriously old and well known in the art, and are well known as an alternative fastening means that may be substituted for button fasteners, or buckle fasteners. Bosch teaches an example of an analogous device, and teaches in col. 2, lines 50-55, the desirability of providing hook and loop fasteners. In view of the teachings of Bosch, it would have

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been obvious to one of ordinary skill in the art at the time of invention to substitute hook and loop fasteners on the ends of the engaging member as taught by Bosch for the buckle assembly taught by Rawlings as an art-recognized equivalent that can be more easily adjusted. Note that modification of Rawlings by Bosch would result in the adjustable portion being located on a side opposite the channel. Referring to claims 3 and 17, Rawlings teaches in col. 2, lines 49-53 that the engaging member comprises a suitable ordinary fabric. Rawlings fails to specifically disclose the use of nylon. Bosch teaches in col. 2 lines 47-50, that it is desirable to have a belt comprised of nylon in analogous exercise devices. In view of the teachings of Bosch it would have been obvious to one of ordinary skill at the time of invention to have the belt of Rawlings comprise nylon due to its suitability as a material for the exercise belts. Referring to claim 5, note in figure 1 of Rawlings that the first and second ends are rounded. Referring to claims 6 and 15, Rawlings as modified by Bosch in claims 22 and 24 teaches connecting portions comprising hook and loop fasteners. Referring to claim 11, note that column 2, lines 45-47 of Rawlings teaches that the channel is stitched to the engaging member (1). Referring to claim 14, Rawlings as modified in claim 24 teaches the engaging member including connecting portions releasably securable to each other to form a loop configured to receive a portion of the user's body. Referring to claim 23, note that Rawlings teaches that the channel comprises a suitable fabric material sewn onto the belt, inherently imparting a degree of flexibility to the material. Referring to claim 26, Rawlings as modified in claim 25 teaches the tubing comprised of rubber.

5. Claims 22 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vernon (U.S. 6,659,921) in view of Van Ballegooie (U.S. 5,336,151). Referring to claim 22, Vernon teaches an elongated resistance member (22) stretchable along its entire length, at least one handle (24) secured to the elongated tube to enable the tube to be stretched by exerting a force on the handle, and an engaging member (12) having a first side and an opposite side, the engaging member having a width and a length between a first end and second end with the length being greater than the width and with the engaging member being flexible along substantially its entire length, the first side including an adjustable portion whereby the first end and second end are releasably fastenable in different positions to permit engaging different portions of a user's body, and the opposite side including a channel (50A) slidably engaging the elongated member along the length of the elongated tube for adjustably locating the engaging member on the elongate. Vernon fails to specifically teach the use of rubber tubing for the elongated resistance member. Van Ballegooie teaches in col. 5, lines 38-46, the desirability of utilizing elastic rubber tubes in an analogous resistance exercise citing the excellence of results. In view of the teachings of Van Ballegooie it would have been obvious to one of ordinary skill in the art at the time of invention to have the elastic member of Vernon comprise rubber elastic tubing as taught by Van Ballegooie in order to enhance exercise. With respect to claim 2, note that Vernon teaches handles secured to either end of the elongated resistance member.

***Response to Arguments***

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6. Applicant's arguments with respect to claims 2-3, 5-6, 11, 14-15, 17, and 22-26 have been considered but are moot in view of the new ground(s) of rejection. Furthermore, Examiner respectfully reminds Applicant that claims are read in their broadest reasonable light, and that limitations drawn to functional recitations do not carry patentable weight so long as the prior art is capable of performing the intended function. Applicant's arguments and amendments have been drawn to features relating to obvious differences in shapes and materials (rubber, rounded ends) which are mere design considerations absent criticality or unexpected results. Nonetheless, Examiner has provided prior art references with teachings of such configurations.

### **Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miller (U.S. 5,234,395) teaches a belt with an inelastic cord traveling through a channel located on the belt. Wehrell (U.S. 4,961,573) teaches a boxing exercise harness including a pair of handles with a resilient cord between them, the resilient cord traveling through a housing on a user worn belt.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Fenn C. Mathew*  
Fenn C. Mathew  
March 29, 2006